Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Provision of Directory Listing Information	)	CC Docket No. 99-273
Under the Telecommunications Act of 1934,	)	
As Amended	)	

RESPONSIVE COMMENTS OF QWEST CORPORATION

INTRODUCTION

Qwest Corporation ("Qwest") urges the Federal Communications Commission ("Commission" or "FCC") to grant the filed Petitions for Reconsideration ("PFR") in this matter[1] and to reject the positions proffered by those opposing reconsideration.[2] Those pressing for reconsideration on the matter of reasonable restrictions on the use of directory assistance (or "DA") present compelling consumer and public interest reasons why reconsideration should result in a change of the Commission's prior determination. On the other hand, those opposing reconsideration offer no arguments that would advance the public interest or the privacy expectations of individuals whose name, address and telephone number information is being made available to entities with whom those individuals have no business relationship.

In addressing the arguments involved in this reconsideration round, it must be remembered that the issue is not what directory assistance functionality can be made of the provided DA information, but what other uses can be made of that information -- specifically

[1] Qwest filed a PFR on Mar. 23, 2001, as did SBC Communications Inc. and BellSouth Corporation, filing jointly.

[2] Oppositions to the filed PFRs were filed by WorldCom Inc. ("WorldCom"), InfoNXX, Inc. ("InfoNXX") and LSSi Corp. ("LSSi") on Apr. 30, 2001. Verizon filed comments in support of the PFRs.

marketing uses. The PFRs demonstrate that individuals doing business with -- at least some -- incumbent local exchange carriers ("ILEC" or "LEC") have a not unreasonable expectation that information provided to unaffiliated third parties by LECs under operation of law will be confined in its use to the purpose for which the law compels the disclosure. No commenting party has demonstrated otherwise.

Nor has any commenting party persuasively argued why the restriction against the use of customer DA information should not be imposed by the supplying party -- the ILEC having the relationship with the individuals wherein the information was originally collected -- rather than a public utility commission that has had no relationship with the individuals and (most likely) made no representations to the individual. Nor did any party address those situations where the participation of a state regulatory authority may be questionable due to legislative deregulatory activities.[3] To the extent that state utility commissions might continue to have jurisdiction over the provision of directory listing information from one carrier to another (as opposed to the directory "service" *per* se), this Commission should permit reasonable LEC-imposed restrictions to remain in place until those commissions have had an opportunity to address and rule on the propriety of such restrictions on DA listing information. It should not eliminate the restrictions now before the public interest analysis is conducted.

Finally, no party actually demonstrated that ILECs use "DA information" to market to individuals or that ILECs have acted in any way in an anticompetitive manner with respect to the provision of DA information for DA purposes.

[3] Qwest PFR at 9-10 (noting that legislatures may deregulate directory services, eliminating state commission regulatory jurisdiction over the offerings).

SPECIFIC FILINGS

InfoNXX

As an initial matter, Qwest does not oppose the position of InfoNXX (nor do we believe our PFR posed any jeopardy to that position) that qualified purchasers of DA information can use the information supplied to them in the same manner as the providing LEC.[4] The Commission previously made clear that whatever information is available to the ILEC must be made available to providers of DA.[5] That is, if a LEC has "information" available to it about a customer with nonlisted or nonpublished service, that information must be made available to other providers of DA, even though the information is not made available to the public. *That is not the issue regarding which reconsideration is sought in the instant case. Indeed that regulatory "rule of law" was established quite some time ago.*[6]

Having acknowledged that DA providers can have DA information in order to provide DA services, it is impossible to understand what about the currently filed PFRs proposes to

[4] InfoNXX at 1-3.

[5] In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended, Third Report and Order in CC Docket No. 96-115, Second Order on Reconsideration of the Second Report and Order in CC Docket No. 96-98, and Notice of Proposed Rulemaking in CC Docket No. 99-273, 14 FCC Rcd. 15550, 15618-19 ¶¶ 128-30, 15623 ¶ 138, 15630-31 ¶¶ 152-53 (1999). See also id. at 15638-40 ¶¶ 167-69.

[6] In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Area Code Relief Plan for Dallas and Houston Ordered by the Public Utilities Commission of Texas, and Administration of the North American Numbering Plan, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd. 19392, 19460-62 ¶¶ 141-44 (1996), vacated in part sub nom. People of the State of California v. FCC, 124 F.3d 934 (8th Cir. 1997), rev'd, AT&T Corp. v. Iowa Utils. Bd., 119 S. Ct. 721 (1999).

provide DA providers with a '"degraded' level of access to DA information."[7] The information received by the competitive DA provider is the same as that enjoyed by the LEC. The purpose to which the information can be put, i.e., DA services purposes, is the same purpose the ILEC uses the information for. Clearly, InfoNXX fails to make out a credible case to support its position that DA information should be provided to entities who have no relationship with the individual by carriers who have a relationship with the individual who provided the information to them, unencumbered by any restrictions that would promote the individual's privacy expectation.

WorldCom

WorldCom argues that the principles of "nondiscriminatory access" require that entities unaffiliated with ILECs be permitted to use DA information for any purpose because ILECs are not restricted in their use of the information.[8] There are three responses to WorldCom's arguments.

First, Qwest's understanding of the Commission's rule is that it focuses on restrictions imposed on third parties -- not the ILEC obtaining the information directly from the individual subscribers. For example, the Commission's comparison of the directory publishing provision (Section 222(e)) with the DA information provision (Section 251(b))[9] demonstrates that Section 222(e) reflects a legislative holding that restricting third party uses of subscriber list information ("SLI") would not be unlawful. Section 222(e) allows the provider of SLI (carriers) to restrict the use of such information to the purposes of publishing a directory. *That restriction does not*

[7] InfoNXX at 4.

[8] WorldCom at 4.

[9] Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended, CC Docket No. 99-273, First Report and Order, FCC 01-27, rel. Jan. 23, 2001 ¶ 47.

apply to the "providing LEC,"[10] *only to the purchasing entity.* A strong argument can be made that Section 251 contains its own "purpose" restriction in the structure of the legislative mandate itself. Congress did not require DA information be provided to entities unaffiliated with LECs so that those entities could sell retail goods or health club memberships.

Second, there is no "discrimination" between the providing ILEC and the purchasing entity when marketing from DA information is prohibited[11] because ILECs do not market their services to individuals with whom they have an existing business relationship from DA information.[12] Rather, they market through customer service record information and customer proprietary network information ("CPNI").[13]

Third, WorldCom argues that the Commission must weigh individual privacy expectations with "consumer benefits from competition."[14] That may be so, but the relevant

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[10] WorldCom at 4. InfoNXX (at 4) also argues that it is not appropriate to permit a restriction that runs only to the purchaser of the information but not the provider of that information. But, this is incorrect, especially if the supplier of the DA information has alternative sources of name, address and telephone number information that could be used by the supplier to support non DA (or non-directory publishing) uses.

[11] WorldCom at 4.

[12] Compare Verizon at 2 ("This is consistent with the Act's requirement that access be nondiscriminatory, in that the other provider may use the information exactly as the providing LEC does, and not in ways that the providing LEC does not."). LSSi is incorrect when it argues that ILECs are unencumbered in their use of DA information. LSSi at 9. While there may be no "legal encumbrance" *per se*, there are practical reasons why DA information *qua* DA information would not be used for marketing applications.

[13] Thus, WorldCom's assertion that "Competitors are entitled to the same choices in legal uses of this information as the provider[,]" begs the question since WorldCom has no existing business relationship with the individual who provided the information, and -- therefore -- has no alternative "source" of information about the individual from which to market. Moreover, as the Commission has made clear in a variety of contexts, the existence -- or lack thereof -- of an existing relationship is material to defining the legal rights and obligations of parties. Thus, there would be nothing inherently unlawful or contrary to policy in conditioning a supplier's "choices in legal uses" to those appropriate to the existence, or absence, of a relationship.

[14] WorldCom at 7. A similar argument is made by LSSi at 2.

competition from the perspective of the individual would have to be "competition in the DA services" business. And, that competition has already been promoted through the Commission's interpretations regarding the provision of DA information for DA services. Expanding the permissible use of DA information to allow for the marketing of other -- possibly unrelated -- services does not promote competition with respect to DA services, or even telecommunications or telecommunications-related services.

WorldCom argues that it is "ironic" that Qwest should argue for a restriction against marketing with respect to DA information because Qwest took issue with the Commission's previous holdings with respect to Billing, Name and Address (or "BNA").[15] WorldCom is correct that -- because of the correlation between figures associated with published name and address and billing name and address -- Qwest took the position that the use of BNA for marketing by a single category of entities (interexchange carriers) would not have compromised individuals' privacy expectations.

But whatever Qwest argued, the Commission clearly argued to the contrary -- and won! Its entire case was built around the fact that an individual expected information provided to an ILEC for a certain purpose (i.e., billing) was to be used by third parties who received the information pursuant to regulatory mandate for the same purpose. There is nothing about the current situation that warrants (or can sustain) a different result. Indeed, given the potential range of possible marketing uses and the range of possible using entities, the instant case more so than the prior case argues for use restrictions.

LSSi

LSSi's filing is a clear example of how the language of the current discussion can easily

[15] WorldCom at 7 n.20.

be obfuscated such that the debate is made to look like it is about providing DA services and DA applications when the "restriction of purpose" issue is much broader. And, because the potential uses of the information are never clearly spelled out by those who may use it for non-DA purposes, it certainly cannot be said that a marketing use is out of the question or unanticipated. Nor can the impact on the consumer of such marketing uses be assessed.

Quite often, LSSi argues as if those filing PFRs are seeking to interfere with or limit the provision of DA information for DA purposes.[16] Other times, however, stuck in a paragraph addressing DA or DA uses, LSSi throws in quite a different concept of how DA information might be used. For example, it complains that LECs are seeking "to impose unreasonable usage restrictions on DA information[,]"[17] "to offer a full array of services,"[18] including "enhanced applications for the DA listing information."[19] *There is a difference between a DA service or application and using DA information.*

Of course, some (or many) uses of DA information could have little to do with DA services or applications or any purported LEC "monopoly market."[20] While commentors such as LSSi argue that their ability to compete in providing DA services or DA applications would be impeded by LEC restrictions on the use of DA information, the range of services that LSSi

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[16] For example, LSSi credits the Commission with attempting to promote "innovation in directory assistance **applications**" (at 2 (emphasis added)); "competitive directory assistance market" (id.); "competitive DA offerings" (at 4); "directory assistance market" and "directory assistance services" (at 8); "quality DA services" and "competitive, innovative DA applications" (at 9); "new, directory assistance applications" and "directory assistance marketplace" (at 10); "innovative directory assistance services" (at 11).

[17] Id. at 4.

[18] Id. at 9.

[19] Id. at 10-11. Stated also as "innovative applications of directory assistance information." Id. at 11.

[20] Id. at 4, 8-9, objecting to LEC restrictions because they operate to forestall competitive inroads into LEC monopoly markets.

claims are, or will be, available to the public as "innovative DA services" would not be adversely impacted by properly drafted licensing limitations, which included limitations against marketing. Thus, the entire argument is a red herring unless there are non-DA applications that DA providers such as LSSi seek to provide. And there most certainly seem to be, since LSSi's argument extends to "advancements made in the competitive use of directory assistance information," which it asserts would be detrimentally impacted by such restrictions.

CONCLUSION

Individuals did not pass the Telecommunications Act of 1996, their representatives did. Individuals did not provide information to ILECs with the expectation that it would be provided to unaffiliated third parties for any reason those third parties wanted to make of it. And, in passing the 1996 Act, their representatives did not mandate that information necessary to be shared to promote competition in telecommunications services be used for marketing non-telecommunications or telecommunications-related services. Lacking any evidence that the peoples' representatives intended to affect the information use expectations of their constituents, the Commission should not do so.

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May 15, 2001

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **RESPONSIVE COMMENTS OF QWEST CORPORATION** to be 1) filed with the FCC via its Electronic Comment Filing System, 2) served, via hand delivery on the entity listed on the attached service list marked with an asterisk (*), 3) served on all other parties listed on the attached service list via First Class United States Mail, postage prepaid.

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May 15, 2001

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